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1 more like he was intending to have a post-trial pre-  
2 sentence Marsden motion.

3 In reading the motion again, and in reading what  
4 Mr. Kilgore was trying to say to the Court, or what I  
5 believe he was trying to say to the Court, that may not  
6 be the case.

7 The other alternative -- or the inference that I  
8 drew from the readings that I have done is that at this  
9 point he was not seeking to make a Marsden motion. What  
10 he was seeking to do was to have in part a new trial  
11 motion based on ineffective assistance of counsel during  
12 the trial. He wasn't seeking to have Ms. Levy  
13 discharged at this point, but was seeking to have a new  
14 trial granted based on ineffective assistance of  
15 counsel, and in that regard, was asking the Court to  
16 appoint a separate attorney, or to have a separate  
17 attorney appointed to represent him for the purposes of  
18 that motion, given that it would be very difficult for  
19 Ms. Levy to argue that motion, since she was the trial  
20 lawyer.

21 You tell me, where are we going?

22 THE DEFENDANT: No. Basically the other thing  
23 about the appointment of the attorney was the fact that  
24 I'm not skilled in matters of law.

25 THE COURT: You have to keep your voice up.

26 THE DEFENDANT: Some issues I would like to  
27 address concerning Ms. Levy's incompetence have to do  
28 with matters involving that was another reason for my

1 request for a newly appointed attorney.

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2 THE COURT: As to this matters, is it a  
3 Marsden motion or is it a new trial motion on  
4 ineffective assistance of counsel?

5 THE DEFENDANT: Yes.

6 THE COURT: I mean at this point the things  
7 that have happened have happened. The trial is in the  
8 books. And other than your motions now, the only thing  
9 that remains is sentencing, other than your motions and  
10 the resolution of those motions. It's either going to  
11 be --

12 THE DEFENDANT: It's a motion for a new trial  
13 basically grants relief for incompetence of attorney.

14 THE COURT: And are you asking the Court to  
15 seek for you another court-appointed attorney for a  
16 motion for new trial?

17 It's my understanding, in reading the Stewart  
18 case, which is cited in Ms. Levy's moving papers, it's  
19 at 171 Cal.App.3d, the burden on you would be to show to  
20 the Court -- I think the language used is a "colorable  
21 claim to ineffective assistance of counsel." Fairly low  
22 burden, but nonetheless a burden.

23 If the Court finds a colorable claim, it is my  
24 understanding of the law that a separate court-appointed  
25 attorney would be appointed to you to represent you for  
26 the purposes of that motion, and perhaps other purposes,  
27 but initially for the purposes of that motion.

28 THE DEFENDANT: Correct.

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1 THE COURT: Is that what you are asking the  
2 Court to do?

3 THE DEFENDANT: Correct.

4 THE COURT: In terms of your colorable claim,  
5 People vs. Stewart, and I believe other cases, have  
6 indicated that in some circumstances those claims should  
7 be made in open court and in some circumstances those  
8 claims should be made in-camera.

9 And I don't know how many claims you have, but it  
10 seems to me that unless all of them need to be held  
11 in-camera for whatever reason you are going to tell me  
12 about, that perhaps, if there are multiple reasons --  
13 if, and I don't know whether there are or not, because  
14 we haven't talked about it -- if there are multiple  
15 reasons, some of which can be discussed in public and  
16 some of which can't, is that the situation?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. Is it possible you --  
19 and I know you have a spread of papers there -- to  
20 separate those that can be discussed in Mr. Stallworth's  
21 presence? Because if it gets to a motion for a new  
22 trial, the other side is going to be represented. I  
23 mean that's not going to be --

24 THE DEFENDANT: Your Honor, I have some 40  
25 different issues that I would like to address concerning  
26 my attorney's incompetence.

27 THE COURT: Well --

28 THE DEFENDANT: Of those 40 issues, as we

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1 discussed, some of them I feel that I can address before  
2 Mr. Stallworth.

3 THE COURT: I understand.

4 THE DEFENDANT: Some I can't. In looking  
5 through this, it would take some time for me to go  
6 through and decipher which ones I can and can't.

7 THE COURT: Do you have them laid out there?

8 THE DEFENDANT: Yes, I have all of the note  
9 form and typed -- some of them typed and so forth.

10 THE COURT: Those are your documents.

11 THE DEFENDANT: Yes.

12 THE COURT: You are familiar with them?

13 THE DEFENDANT: Yes.

14 THE COURT: Let's start with the first one and  
15 go all the way through. And if you find one of those in  
16 looking at it, when you are about to address it, that  
17 it's going to say something that for some reason, for  
18 instance, might tend to incriminate you at some future  
19 trial -- and I don't know about the immunity issue, I'm  
20 not advising you in that regard -- if there's some issue  
21 about that, set it aside, and then we will discuss  
22 whether it's going to be in-camera or not after we go  
23 through the ones that aren't.

24 Mr. Stallworth, you seem like a man in need of a  
25 tablet.

26 THE DEFENDANT: Your Honor, counsel just  
27 advised me that it is best for me to address all of my  
28 issues in-camera. She doesn't feel there would be any

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1 necessary need for Mr. Stallworth to be present.

2 THE COURT: Well, that's nice for her to say.  
3 And you have read the Stewart case, as I have, too. It  
4 talks about in-camera if needed.

5 And some of those issues, if they concern things  
6 that are part of the public record already that happened  
7 at trial, what's the point of asking Mr. Stallworth to  
8 leave? Eventually, when a new motion is made for a new  
9 trial, he is going to be there, because it's going to be  
10 a written motion, and this is just to decide whether or  
11 not there is a colorable claim.

12 So, I'm going to ask you -- and, you know, if it  
13 looks like it's going to be disclosing some informa-  
14 tion -- and you are aware of the Stewart case; that in  
15 that case, if it's the same one I remember, it had  
16 something to do with a guy trying to escape, and there  
17 were a couple of issues raised in that case. One is  
18 that the gentleman was not -- didn't have all of his  
19 mental faculties and was subject to seizures. I think  
20 he said he fell off the roof ladder, and the Court held  
21 that that was something that came out at the trial.

22 But the other side of it was, there was a failure  
23 to call some specific witnesses. And that may be  
24 something that would be -- something that came out of  
25 the trial.

26 You know, do the best you can. Err on the side  
27 of caution if it's something that you think should be  
28 in-camera; but if it's something that came out at

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1 trial -- and I am probably going to ask Mr. Dohrmann to  
2 prepare the transcript of this proceeding -- so try to  
3 be -- don't ramble. I know I tend to. I'm doing it  
4 right now. But try to be as concise as you can as I'm  
5 going to attempt to take notes.

6 And if you would, just say "first" or "one", or  
7 something like that, so, you know, I want to be able to  
8 do it in an orderly fashion, so that somebody looking at  
9 this in the future, if it's necessary, can make sense  
10 out of it.

11 And the reason I'm prefacing my remarks among  
12 those things that I read was your exhibit No. 1 to the  
13 Marsden motion had with Judge Nakahara back in February,  
14 and some of that was a bit rambling. So, be as clear as  
15 you can.

16 THE DEFENDANT: Can I have some time to look  
17 through this? (Examining)

18 THE COURT: And, Mr. Stallworth, I'm sitting  
19 here talking about your position. I don't even know if  
20 you want to be here for this.

21 MR. STALLWORTH: I do.

22 THE DEFENDANT: One issue I would like to  
23 address to start off is the misstatement counsel made in  
24 the language that was used to dismiss the Oklahoma prior  
25 as a strike for purpose of impeachment.

26 THE COURT: Okay. Let me make a note. I  
27 believe that was discussed on the record; right?

28 THE DEFENDANT: Yes. The defendant's



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1 anticipated trial testimony was incorrectly stated --  
2 well, if I could.

3 (Short discussion off the record)

4 THE COURT: This is your motion; but, on the  
5 other hand, Ms. Levy is an attorney.

6 THE DEFENDANT: If I could, most of things I  
7 have written down to read in court, that way I get all  
8 of the facts and details in, because I don't want to sit  
9 up here and refreshing them out of my memory and  
10 misstate them. So, I would like to read what I have  
11 written on my motions to be entered into the Court  
12 record.

13 THE COURT: That's fine, but read them. Read  
14 them knowing I'm going to be listening and writing them  
15 down; okay?

16 THE DEFENDANT: Okay. Again, I proffered  
17 defendant's anticipated trial testimony was incorrectly  
18 stated within the content of the motion, in light of  
19 that fact counsel has since being appointed to the  
20 defendant's case, had in her possession a copy of the  
21 defendant's anticipated testimony.

22 THE COURT: Now, that's the issue, as I  
23 recall, that was brought up during the trial about the  
24 wording of a motion.

25 THE DEFENDANT: Yes.

26 THE COURT: And that motion was a written  
27 motion that was filed --

28 THE DEFENDANT: Yes.

1 THE COURT: -- true?

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2 THE DEFENDANT: Yes. At the initial filing of  
3 that motion, and when counsel gave it to me to review, I  
4 read over it, and I pointed out to her she was incorrect  
5 in the language. Counsel stated to me at that time that  
6 it was irrelevant.

7 THE COURT: And this is on the record. We had  
8 this discussion on the record and it concerned whether  
9 or not I was going to allow you to be impeached, if you  
10 testify, with the situation in Oklahoma.

11 THE DEFENDANT: Right.

12 THE COURT: And your point was --

13 THE DEFENDANT: First of all, she hadn't --  
14 she had a copy of my anticipated testimony from the  
15 beginning of her appointment. So, I don't understand  
16 how she could have made that mistake.

17 THE COURT: Now, that point was brought to the  
18 Court's attention before the ruling was made; true?

19 THE DEFENDANT: True. It was. I'm moving on  
20 because it's going --

21 THE COURT: I got it.

22 THE DEFENDANT: -- to go into something else.

23 THE COURT: That's No. 1.

24 THE DEFENDANT: Yes. That's No. 1.

25 As I stated, her response to the misstated  
26 language was that it was irrelevant. Well, the  
27 irrelevant language, the language became a factor in the  
28 Judge's ruling to allow the Prosecutor to use the



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1 testimony of the prior to impeach the defendant's  
2 defense of unreasonable self-defense as the attorney had  
3 mistakingly worded the proffer (sic).

4 THE COURT: Let me say one thing, that you are  
5 anticipating and trying to think what my rulings were  
6 based on. My recollection is that that situation was  
7 cleared up by you and Ms. Levy before I made my  
8 decision, and I understood your motion and still made my  
9 decision in the corrected form. And if that was wrong  
10 on my part, it was; but I decided on what I had before  
11 me, which included both your and Ms. Levy's correction  
12 of what the true situation is alleged to have been;  
13 okay?

14 THE DEFENDANT: Okay.

15 THE COURT: So, I just want to throw that in  
16 as my piece.

17 THE DEFENDANT: Okay.

18 Well, at the time that counsel acknowledged to  
19 the Court the mistake, she pointed out to the defendant  
20 that because of this mistaken language and her  
21 admonishing the Court of the issue, that the Judge  
22 was -- probably most likely upset due to the fact that  
23 she was changing the defense from unreasonable self-  
24 defense to reasonable self-defense due to the nature of  
25 the language.

26 At the time you made your ruling, I asked counsel  
27 to file a writ of mandate to address the issue to the  
28 appeals court at that moment. Counsel refused because

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1 she didn't know how to file a writ of mandate. She was  
2 uncomfortable.

3 And I like to also address counsel, failed to  
4 research the application of the law provided under  
5 Evidence Section Code (Sic) 1101(c).

6 THE COURT: Is this the same point?

7 THE DEFENDANT: Yes, the same point. Of  
8 1101(c) in a matter of a diligent and conscious effort.

9 Counsel may respond to my comments and saying she  
10 wasn't conscious of the fact that the prosecution would  
11 seek to introduce the prior on the testimony of this  
12 subdivision, being that it was subdivision (c) was only  
13 made mention during the hearing.

14 In addressing the 1101(b), I feel that counsel  
15 failed to argue --

16 THE COURT: Is this a different point now, or  
17 same point?

18 THE DEFENDANT: It's all in the same essence  
19 of the issue.

20 THE COURT: All right.

21 THE DEFENDANT: I feel counsel failed to argue  
22 that section 1101 prohibits admission of other crime  
23 evidence for the purpose of showing the defendant's bad  
24 character.

25 THE COURT: Mr. Kilgore, let me cut you off  
26 there. And the reason I'm doing it is, there was no  
27 1101(b) evidence here. The issue was whether or not you  
28 could be impeached if you chose to testify. This was

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1 not a case where the Prosecutor made a motion under  
2 1101(b) that was permitted. I didn't even know if he  
3 made one at this point, but that's a different bucket of  
4 worms.

5 If a person makes a motion under 1101(b), the  
6 conduct itself then is allowed to be introduced to  
7 basically show intent, motive, those kinds of things  
8 under 1101(b). And I don't think there was a 1101(b)  
9 motion here, was there?

10 MR. STALLWORTH: No, there wasn't.

11 THE DEFENDANT: Well, there was a discussion  
12 of the Evidence Code of 1101(b) due to the fact that the  
13 motion that the District Attorney had failed to impeach  
14 the defendants.

15 THE COURT: Different.

16 THE DEFENDANT: Two different things.

17 The other issue I'm addressing, counsel's  
18 arguments and her representation on behalf of that issue  
19 where I felt she fell short to deny it, first of all,  
20 researching the issue of 1101(c). She did 1101(b) but  
21 not (c).

22 THE COURT: All right. And as I was --

23 THE DEFENDANT: And as I was saying, the  
24 section prohibits admission, the arguments fell short  
25 that the section prohibits the admission of other crime  
26 evidence for the purpose of showing defendant's bad  
27 character or criminal propensity.

28 THE COURT: I'm aware of the provisions of

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1 1101(b). I know you want -- you know, I know it's  
2 frustrating sitting in custody and writing all of this  
3 out. But I'm aware of 1101(b). And any Appellate Court  
4 that reads this is going to be aware of 1101(b).

5 THE DEFENDANT: Okay. I'm kind of confused  
6 here, because, as I said, I wrote this stuff out, for  
7 the purpose of making the record, just read the stuff.

8 THE COURT: Is it all written out?

9 THE DEFENDANT: Yes.

10 THE COURT: You want to file it as written  
11 out?

12 THE DEFENDANT: If I file it, it would be open  
13 to public view at the hearing.

14 THE COURT: No. I don't know if it would be  
15 or not. I'm trying to get you -- you have now spent  
16 about 20 minutes on point No. 1.

17 THE DEFENDANT: Yeah.

18 THE COURT: You made your point. It deals  
19 with the Court's rulings and her alleged failure to  
20 basically ably represent you with regard to that motion  
21 concerning the court's allowing you to be impeached on  
22 the behavior as to the prior conviction. That you have  
23 made clear.

24 But, you know, going on and on and on about it, I  
25 mean I know the law requires me to explore it, but if  
26 you are going to have 40 of these, it's going to take a  
27 long time, and I'm going to ask you, do you have access  
28 to a typewriter?

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1 THE DEFENDANT: No.

2 THE COURT: I'm going to ask, you know, I want  
3 you to give me the summary idea at this point.

4 As you know, the only burden you have here is to  
5 raise a colorable claim. This is not your actual motion  
6 for a new trial; okay? Sort of the preliminaries of  
7 one.

8 THE DEFENDANT: Well, just a couple more  
9 comments.

10 THE COURT: All right. Just read them,  
11 please, then.

12 THE DEFENDANT: Okay. Furthermore, counsel  
13 filed to argue the existence of the policy requiring  
14 exclusion of the evidence that forbid the prosecution  
15 from using a prior in any form to question the  
16 defendant's credibility, because of judicial elements of  
17 the crime are not -- do not involve moral turpitude,  
18 making an unimpeachable crime; therefore, forbid  
19 1101(c).

20 I would like to point out, too, that when my  
21 attorney asked the prosecution what fact he chose to  
22 prove with the prior testimony, he mentioned something  
23 about 27 factors being in my prior testimony that were  
24 similar to the present case.

25 My counsel at that time asked, you know, to  
26 present to the Court those issues, some 20, I believe he  
27 say, and he didn't present any to support his argument  
28 for using the prior, which my counsel didn't make any

1 mention of that or refer in her argument.

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2 I have to make mention because of that, counsel  
3 advised that ruling that the Judge made, counsel advised  
4 the defendant not to testify. She also made a record of  
5 that.

6 Well, counsel also failed to make a record that,  
7 because of that ruling, she changed my defense in the  
8 midst of all of the preparation she had previously made  
9 to one of reasonable doubt, which she didn't take  
10 anytime to prepare, for before that ruling and for that  
11 moment in the trial, proceeded to argue a reasonable  
12 doubt defense. She also failed to call witnesses.

13 THE COURT: Now, are we into a different point  
14 now.

15 THE DEFENDANT: No. Let me stop right there  
16 before I continue on with that point.

17 And in light of the issue of counsel refusing to  
18 file the writ, I would like to state that it's counsel's  
19 duty to preserve actions of defendants, counsel due to  
20 take all actions to preserve a defendant's right to fair  
21 trial.

22 THE COURT: In theory I'm supposed to know  
23 what the law is; okay? I want to just know what your  
24 complaints are.

25 THE DEFENDANT: Moving onto another issue --

26 THE COURT: Okay.

27 THE DEFENDANT: -- I would like to address  
28 counsel's comments in the closing arguments concerning



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1 someone firing shots at the car and someone returning  
2 fire is self-defense where it's totally unsupported in  
3 the evidence that was presented in trial.

4 Counsel also submitted that during that argument  
5 this defendant was sitting in the position where the  
6 shooter was located in the car, thus making an impli-  
7 cation that the defendant fired the shot, which contra-  
8 dicted her argument of reasonable doubt.

9 Furthermore, counsel's request of the self-  
10 defense instruction was unsupported, I believe, in the  
11 evidence, and its purpose was prejudicial to effect the  
12 reasonable doubt argument.

13 Also, counsel attempted to persuade the  
14 defendant's inquiry as for the instruction and its  
15 prejudicial effect. Counsel sought to introduce this  
16 instruction as a tactical strategy to give, quote, the  
17 jury any possible means to reach a verdict of not  
18 guilty.

19 Hearing the defendant questions counsel's  
20 failure -- and this is going to another issue -- call  
21 witnesses to support that tactic. Those witnesses  
22 were --

23 THE COURT: I'm going to need the names, too.

24 THE DEFENDANT: Those witnesses were Betsy  
25 Varela.

26 THE COURT: Spell that.

27 THE DEFENDANT: Yes. B-e-t-s-y, V-a-r-e-l-a;  
28 and Halvechia, H-a-l-v-e-c-h-i-a, Osborne,

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1 O-s-b-o-r-n-e; and Jamarío Hennen, J-a-m-a-r-i-o,  
2 Hennen, H-e-n-n-e-n.

3 These witnesses' testimony was relevant to the  
4 argument in front of the instructions to support it,  
5 such as an instruction which may be -- going into  
6 another issue -- pertaining to prior assaults by the  
7 deceased and his gang and prior acts of violence.

8 I have here, Your Honor, an affidavit, also a  
9 transcribed copy of Jemarrio Hennen's taped statement to  
10 homicide officer Lou Cruz, and, again, the affidavits of  
11 Betsy Varela and Halvechia Osborne, stating the  
12 content -- summary of their testimony.

13 MS. LEVY: Your Honor, I would ask to review  
14 those if I'm going to have an opportunity to respond. I  
15 have not seen them.

16 THE COURT: All right. So, that's -- so,  
17 failure to call witnesses, you have given me three  
18 names. You have talked about some documents.  
19 Apparently, Ms. Levy is looking at them now in terms of  
20 what we ought to do with them.

21 That's that point: Failure to call witnesses?

22 THE DEFENDANT: Yes.

23 THE COURT: Got it. We put what's going to  
24 happen with the affidavits on hold. As a part of the  
25 other, the statement that was made to Lou Cruz, I'm  
26 assuming that all parties have that already.

27 MS. LEVY: Correct, Your Honor.

28 THE COURT: Okay.

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1 THE DEFENDANT: I would like to say, in  
2 addition to the statement of Jemarrio Hennen, his  
3 statements would have undermined some of the prose-  
4 cution's argument which he made to the Court, which  
5 counsel failed to present, and Jemarrio Hennen is the  
6 cousin of the deceased.

7 THE COURT: Okay.

8 THE DEFENDANT: Moving on to another issue, I  
9 would like to address counsel's failure to investigate  
10 any of the prosecution witnesses before trial.

11 THE COURT: Specifically what do you mean?

12 THE DEFENDANT: Counsel failed to interview  
13 witness Matthew Bryant before he testified at trial.  
14 Didn't even attempt to make any contact. And when he  
15 say counsel, she didn't give the okay to the investi-  
16 gator to contact him. I discussed this issue with Ms.  
17 Levy before.

18 THE COURT: I have got it: Failure to contact  
19 the witness --

20 THE DEFENDANT: Yes.

21 THE COURT: -- Matthew, is it Bryant?

22 THE DEFENDANT: Matthew Bryant.

23 If I may, I would, would like to discuss some of  
24 the possibilities that it -- may have arisen had counsel  
25 contacted Mr. Bryant.

26 THE COURT: I don't think you really have to  
27 do that. Just raise the point.

28 The idea is recognize what your burden is. You

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1 are not arguing your motion at this point; you are just  
2 trying to show me why you should be appointed an  
3 attorney to handle this issue separately. That's what  
4 you are trying to do.

5 THE DEFENDANT: Right. I got a better under-  
6 standing. Thank you.

7 Raising another issue on Matthew Bryant's  
8 testimony is, counsel failed to object and request that  
9 the tape be edited to exclude the concocted admissions  
10 that Matthew Bryant stated or alleged to have come from  
11 the defendant.

12 I would also like to make a record, another issue  
13 pertaining to those alleged admissions that Matthew  
14 Bryant claimed the defendant made, that counsel failed  
15 to object to the prosecution using Matthew Bryant's  
16 taped statement, and the content of that statement which  
17 was outside of the Judge's limited instructions in  
18 closing arguments.

19 Moving on to another issue. Counsel failed to do  
20 a demonstrative investigation pertinent to the ability  
21 of the witnesses to clearly identify circumstances  
22 testified to by those witnesses when viewing through a  
23 partially tinted open window.

24 To be a little bit more specific about that  
25 issue, there was two issues that I asked counsel, and I  
26 know you said I shouldn't get into this, but I feel I  
27 need to.

28 One was when counsel did take pictures of the

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1 car, I notified her that it appeared, because of the  
2 fact that the car had been released from evidence and  
3 sold to the public, that the tint on the windows had  
4 been changed, and I wanted her to check into that. She  
5 failed to do it.

6 I also asked her to have someone positioned in  
7 the car with my complexion and my height to give the  
8 jury an insight on the ability to identify someone. She  
9 failed to do that.

10 Also like to address another issue arising out of  
11 the release of the car from the property of the Oakland  
12 Police office, I mean department.

13 As counsel failed to file a motion to dismiss the  
14 car due to the fact that the possible evidence favoring  
15 the defendant was damaged when the car was released from  
16 O P.D.'s custody --

17 THE COURT: You don't mean "dismiss the car."  
18 I think you probably mean to exclude evidence concerning  
19 the car?

20 THE DEFENDANT: Yes. Evidence was excluded.  
21 We couldn't review it, we didn't have the opportunity,  
22 so forth. And counsel failed to file the motion to  
23 dismiss the case due to the probable evidence that may  
24 have been favorable to the defense had we been able to  
25 research.

26 Counsel refused -- this is a new issue -- counsel  
27 refused to call or attempt to locate prosecution witness  
28 Terry Dandy.

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1 THE COURT: What's the person's name again?

2 THE DEFENDANT: Terry Dandy.

3 THE COURT: This was a prosecution witness --

4 THE DEFENDANT: Yes.

5 THE COURT: -- that the defense failed to  
6 locate?

7 THE DEFENDANT: Yes.

8 THE COURT: And somehow that's prejudice to  
9 your case, that she didn't locate their witness who  
10 didn't testify here?

11 THE DEFENDANT: Yes. If I may, I can go in to  
12 explain.

13 THE COURT: About 30 seconds' worth.

14 THE DEFENDANT: I believe it was pertinent to  
15 have Mr. Dandy testify in this case due to the fact that  
16 he alleged it was two shots fired out there on the  
17 scene, for one. One of those shots was unaccounted for  
18 on behalf of the defendant by the prosecution witnesses  
19 during the trial, which was a major contradiction.

20 It was also a contradiction had Ms. Levy called  
21 Jamarrio Hennen.

22 Terry Dandy was also present during an assault  
23 against the defendant in which Terry Dandy struck the  
24 defendant.

25 This all occurred two days before the shooting,  
26 which contradicted all of the prosecution's accounts as  
27 far as these assaults occurring months before this  
28 alleged shooting occurred.



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1 Moving on -- oh, and also concerning Terry  
2 Dandy's testimony, he drew a map, which I also have an  
3 exhibit here, of when related to other issues that  
4 counsel failed to do on my trial concerning ballistic  
5 testing, firing, and so forth. Please.

6 (Short discussion off the record)

7 THE DEFENDANT: I like to correct that.  
8 Counsel did do a ballistic test, but she failed to  
9 convey to the expert the specifics of descriptions given  
10 by the prosecution witnesses of the gun. And there is  
11 an issue I would like to address outside the presence of  
12 Mr. Stallworth concerning that if we can come back to  
13 that.

14 THE COURT: Set that one aside.

15 THE DEFENDANT: Okay. Counsel refused to --  
16 this is a new issue -- counsel refused to question the  
17 integrity of homicide officer Sergeant Green and  
18 District Attorney representatives handling the  
19 Preliminary Hearing.

20 THE COURT: Refused to investigate the  
21 integrity of Green?

22 THE DEFENDANT: Investigate and integrity of  
23 Sergeant Green.

24 THE COURT: And who else?

25 THE DEFENDANT: And the district attorneys who  
26 handled the Preliminary Hearing.

27 THE COURT: Do you know who that is offhand?

28 THE DEFENDANT: Mean. Paul Mean.

MR. STALLWORTH: Jim Meehan.

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THE COURT: Jim Meehan?

THE DEFENDANT: Counsel failed -- this is another issue -- counsel failed to raise the issues concerning the contradiction between witnesses of the description they gave and all statements which some were inconsistent compared to others. But they all contradicted concerning the attire that the defendant is alleged to have on that day. And that was a black beanie, a black cap. And Shanae Anderson, which counsel failed to raise, was in an afro.

Counsel refused -- another contradiction: Counsel refused to establish the contradictions of events described by witnesses Raymond Jones, Mary Washington and Mary Loggins that were in contrast of Bianca Moore's and Shanae Anderson's versions of events pertaining to the moment they were able to identify the shooter.

MS. LEVY: Your Honor, for the record it looks like Mr. Kilgore is on No. 21.

THE COURT: That's fine.

THE DEFENDANT: Counsel failed to address the issue pertaining to the extent of Raymond Jones' involvement in relation to the stolen car report and the location in which the car was found.

Moving along, counsel failed to elect from the testimony of defense investigator Monte Beers statements that were made in previous interview with Mary

000534

1 Washington concerning her version of someone running  
2 from the alleged crime scene and concealing something  
3 under their coat.

4 And in addressing the matter of law, which I'm  
5 not too clear on, I would like to say that counsel  
6 failed to object or file any type of motion of dismissal  
7 before the prosecution, using perjured testimony before  
8 the course of this trial.

9 THE COURT: What do you mean by "perjured  
10 testimony"?

11 THE DEFENDANT: In counsel's closing -- I mean  
12 the District Attorney's closing arguments, he stated to  
13 the jury that, okay, I will give you that Raymond Jones  
14 lied, he was aware of the fact that the gun was in the  
15 car at the time they drove over to the scene where the  
16 alleged crime occurred.

17 Now, I'm not for sure if that would be considered  
18 perjury, use of perjured testimony, knowing on behalf of  
19 the prosecution or not, so I said it's an issue of law  
20 that another attorney would have to address.

21 THE COURT: Since, Mr. Stallworth, there is no  
22 evidence that Mr. Stallworth was there --

23 THE DEFENDANT: Excuse me?

24 THE COURT: Since there is no evidence that  
25 Mr. Stallworth was there at the time, I guess that may  
26 be his opinion that Mr. Jones gave false testimony about  
27 at least portions of it. And that happens, sadly, in a  
28 lot of cases.

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1 THE DEFENDANT: Counsel failed to ask for  
2 instructions relating to the testimony and way the jury  
3 would examine the testimony of a drug addict.

4 THE COURT: So, it would go to some  
5 witness's -- if a witness were an addict, you are  
6 suggesting some instruction should have been offered  
7 concerning credibility of a person addicted to drugs?

8 THE DEFENDANT: Yes.

9 Counsel refused to address Raymond Jones'  
10 Preliminary Hearing testimony pertaining to his level of  
11 intoxication.

12 Counsel also failed to present the conflicting  
13 statements of Raymond Jones concerning when the  
14 assaults, about when they occurred.

15 THE COURT: About when they occurred, you  
16 said?

17 THE DEFENDANT: Yes, when they occurred.

18 THE COURT: And which? You said involving an  
19 assault involving Mr. Jones?

20 THE DEFENDANT: Assault against the defendant.

21 THE COURT: Against you.

22 THE DEFENDANT: Yes.

23 THE COURT: By --

24 THE DEFENDANT: The deceased and his gang.

25 THE COURT: And with conflicting information  
26 concerned the dates?

27 THE DEFENDANT: Yes.

28 THE COURT: Okay.

1 THE DEFENDANT: Counsel refused to investigate  
2 into all and any involvement by the F.B.I. in this case.

3 THE COURT: And, again, to what end did that  
4 prejudice your case?

5 THE DEFENDANT: It is my understanding from  
6 having a conversation with Mr. Jones a month or so after  
7 this occurred, after he had been arrested, that he was  
8 being offered a reward that was offered to him by F.B.I.  
9 agents and et cetera.

10 During the hearing, the voluntariness of Raymond  
11 Jones, counsel failed to inquire into the coercion of  
12 the second arrest and the interaction of the District  
13 Attorney in that matter.

14 THE COURT: I'm not sure I got that one.  
15 During the voluntariness of the testimony --

16 THE DEFENDANT: During the hearing.

17 THE COURT: -- of Raymond Jones. Yes.

18 THE DEFENDANT: Of the voluntariness --

19 THE COURT: Right.

20 THE DEFENDANT: -- of Raymond Jones, counsel  
21 failed to inquire into the coercion.

22 THE COURT: Investigate the possibility that  
23 those statements were coerced.

24 THE DEFENDANT: Yes. And the interaction of  
25 the District Attorney.

26 THE COURT: And the action of whom?

27 THE DEFENDANT: The interaction of the  
28 District Attorney with Mr. Jones relating to that

1 coercion.

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2 THE COURT: Got it.

3 THE DEFENDANT: Counsel failed to establish  
4 some type of calendar dates of Bianca Moore's testimony  
5 pertaining to the matters which she gave dates, and so  
6 forth, concerning events that occurred between the  
7 deceased and the defendant. I'd like to say it was to  
8 show lack of credibility on Ms. Moore's behalf.

9 Counsel failed to impeach Ms. Moore concerning  
10 the number of times that she claimed to have seen the  
11 defendant prior to the shooting.

12 Counsel failed to inquire into issues concerning  
13 Bianca Moore's testimony that I have stated or gave --  
14 given notes to counsel in relation to Ms. Moore's  
15 testimony.

16 I don't know. That's kind of vague.

17 THE COURT: You lost me there.

18 THE DEFENDANT: Well, I gave her notes to ask  
19 her certain things, specifics pertaining to her  
20 testimony. And counsel failed to --

21 THE COURT: Follow-up on notes that you gave  
22 Ms. Levy --

23 THE DEFENDANT: Yes.

24 THE COURT: -- concerning potential  
25 questioning of the witness Bianca Moore.

26 THE DEFENDANT: Yes. Also I would like to add  
27 with Raymond Jones and Shanae Anderson. I would say  
28 every witness.



**00538**

1           Okay. I think there's about one more issue I  
2 would like to address before going or requesting an  
3 in-camera hearing, is the fact that counsel failed to  
4 request of the Court an instruction for murder in the  
5 second degree by means of drive-by shooting and  
6 outlining the issues of intent, as the prosecution did  
7 for murder in the first degree, by means of drive-by  
8 shooting.

9           THE COURT: Okay. Does that summarize those  
10 things that should be discussed publicly?

11           THE DEFENDANT: I think that pretty much got  
12 to most of them. Yeah. If there's anything else, would  
13 I be able to call Mr. Stallworth back?

14           THE COURT: Well, basically you know what this  
15 hearing is about. The idea is for you to explain to me  
16 why there may be a colorable claim to have counsel,  
17 other than Ms. Levy, represent you at a motion for new  
18 trial. And I have asked you to divide those into a  
19 couple of categories.

20           And I know you have looked at this and I know you  
21 have got a list in front of you. But in terms of the  
22 things that you are conceding can be discussed publicly,  
23 have we pretty much gone through those?

24           THE DEFENDANT: Yes.

25           THE COURT: The thing is, if I decide to  
26 release Mr. Stallworth, I don't want to send him back  
27 downstairs and bring him back up and send him back  
28 downstairs and bring him back up.

**000539**

1 THE DEFENDANT: There was one more thing  
2 counsel failed to do.

3 THE COURT: Go ahead.

4 THE DEFENDANT: Counsel refused, as requested  
5 by the defendant, to subpoena all medical records  
6 related to the emergency visit.

7 (Short discussion off the record)

8 THE COURT: Well, I see some disagreement.  
9 These are allegations that may be borne out or not borne  
10 out.

11 MS. LEVY: Understood, Your Honor.

12 THE DEFENDANT: Well, if I could readdress  
13 that issue, I would like to.

14 THE COURT: That's fine. Your indication is  
15 that she basically refused to request or subpoena  
16 medical records.

17 THE DEFENDANT: She failed to request a -- or  
18 subpoena those issues from Highland Hospital relating  
19 to --

20 THE COURT: Whose medical records?

21 THE DEFENDANT: The deceased in relation to  
22 the emergency visit due to this incident.

23 THE COURT: To being shot.

24 THE DEFENDANT: Yes.

25 THE COURT: You feel the testimony of the  
26 Coroner was not sufficient --

27 THE DEFENDANT: No, I do not.

28 THE COURT: -- in certain respects?

1 All right. Is that it for the public stuff?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, with Mr. Stallworth here, in  
4 very general terms, why do you believe that the  
5 remainder of these things needs to be kept at an  
6 in-camera basis? Just generally speaking. Don't  
7 disclose anything that shouldn't be disclosed.

8 THE DEFENDANT: I'm trying to figure out the  
9 way to say this.

10 (Short discussion off the record)

11 THE DEFENDANT: The thing I would like to  
12 discuss further are things that may tend to incriminate  
13 me.

14 THE COURT: All right. And how many of those  
15 are there, roughly?

16 THE DEFENDANT: I would say five or ten.

17 THE COURT: All right. Mr. Stallworth, it's  
18 my understanding in reading the cases, even a general  
19 description, that's probably sufficient if there should  
20 be a new trial. So, at this point I'm going to ask you  
21 to step outside. We will phone you when we get ready to  
22 go back on the record again. Same extension?

23 MR. STALLWORTH: Yes.

24 THE COURT: All right. At this point, the  
25 courtroom should be closed to others.

26 (Whereupon, Mr. Stallworth leaves the courtroom)

27 (Whereupon, the in-camera proceedings were had on  
28 the record at this time, but not contained herein)

CO0541

1 (Whereupon, Mr. Stallworth enters the courtroom)

2 THE COURT: All right. Back on the public  
3 record then. Mr. Stallworth has returned.

4 Does either side have any comment concerning Mr.  
5 Kilgore's list of contentions, both those that were  
6 heard by both parties and some that were heard by only  
7 the defense, as to whether or not he has presented a  
8 colorable claim of ineffective assistance of counsel,  
9 which I recognize "colorable" is a very thin coat, if  
10 you will, as to whether or not he should be represented  
11 by an attorney other than Ms. Levy for the purpose of  
12 filing his motions for new trial?

13 MR. STALLWORTH: I would only briefly comment  
14 that the majority of issues that were brought up, I  
15 believe, don't meet that standard. However, to err on  
16 the side of caution, I believe that it may be appro-  
17 priate to have the defendant appointed a different  
18 counsel in order to make an official record to file the  
19 motion. That's what my brief understanding of the  
20 Stewart case is.

21 THE COURT: And, Ms. Levy, do you wish to be  
22 heard?

23 MS. LEVY: Yes, Your Honor. Although I am  
24 more aware of all of Mr. Kilgore's complaints probably  
25 better than the Court in what has been heard today, and  
26 all of the specifics, I have to agree with Mr.  
27 Stallworth. I do not believe it reaches a colorable  
28 claim; however, I would ask the Court to appoint him a

C00542

1 new attorney, one to protect the records, so that it's  
2 not the Court kind of making the decision but another  
3 independent attorney assisting Mr. Kilgore.

4 And in view of some of these allegations I feel  
5 are below the belt, I rather not represent him. I mean  
6 I can, but at this point I would urge the Court to give  
7 him new counsel.

8 THE COURT: All right. Based on the totality  
9 of the circumstances here -- and I'm not making a  
10 specific finding as to colorable claim, although  
11 basically the cases that I read don't call for the  
12 defense to answer each and every one of these allega-  
13 tions, they just indicate that there has to be a  
14 colorable claim. And, frankly, I'm aware of some of  
15 them that I heard during the course of the trial.

16 But based on this, on the totality of it, and in  
17 the interests of justice, truly, the Court will appoint  
18 another counsel, order the appointment of another  
19 counsel to represent Mr. Kilgore for a motion for new  
20 trial.

21 So, I'm going to ask the clerk, please, Ms.  
22 Boyns, to phone the Alameda County Bar Association, the  
23 court-appointed division. I spoke with them the other  
24 day, telling them they might be expecting a call from  
25 me.

26 Please indicate that the Court wants an attorney  
27 to represent Mr. Kilgore on a motion for new trial. I  
28 would like whoever they select, please, to phone the

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1 court, just so I could tell him or her the idea of the  
2 complexity of it.

3 But we need to set a court date for that attorney  
4 to appear. And the question is what day do you want it  
5 to be?

6 I'm assuming we should get him an attorney soon.  
7 How about Thursday, the 3rd? I have a few motions on  
8 that day, but it's pretty open.

9 MS. LEVY: I'm available, Your Honor.

10 THE COURT: Are you going to be around?

11 MR. STALLWORTH: I will be here.

12 MS. LEVY: And perhaps I should be here just  
13 to talk to the attorney.

14 THE COURT: Absolutely.

15 MS. LEVY: That would be fine, Judge.

16 THE COURT: Absolutely. So, I will see you  
17 Thursday.

18 MS. LEVY: Would that be 9:00 a.m. calendar or  
19 9:30?

20 THE COURT: It will be the 9:00 a.m. calendar.  
21 If everybody is here, perhaps we could discuss and you  
22 could discuss in chambers with the attorney, just so he  
23 will have some idea, and then we will call it and get  
24 him to accept the appointment.

25 But I want to make sure whoever it is knows what  
26 they are getting into. Sometimes these are fairly  
27 clearly cut; sometimes it's a little broader brush.

28 And, again, I would ask Mr. Dohrmann if you can



~~000544~~

1 do so between now and the 3rd prepare the transcript of  
2 this proceeding, the public part and then the in-camera  
3 part separately under seal.

4 See you Thursday.

5 MR. STALLWORTH: Thank you, Your Honor.

6 ---o0o---

1 STATE OF CALIFORNIA )  
2 COUNTY OF ALAMEDA ) ss.

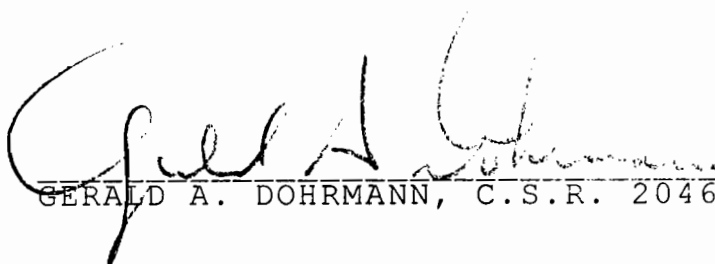
C00545

4 CERTIFICATE OF REPORTER

5 I, GERALD A. DOHRMANN, Certified Shorthand  
6 Reporter, do hereby certify that I am an Official Court  
7 Reporter of the Superior Court of the State of  
8 California, and that, as such, I reported the  
9 proceedings had in the above-entitled matter at the time  
10 and place set forth herein.

11 I further certify that my stenograph notes were  
12 thereafter prepared by computer-assisted transcription  
13 into typewriting, and that the foregoing pages numbered  
14 1 through 35 constitute a full, true and correct  
15 transcription of said notes in the above-entitled  
16 proceedings.

17 Dated at Oakland, California, this 27th day of  
18 June, 2003.

19  
20  
21   
22 GERALD A. DOHRMANN, C.S.R. 2046  
23  
24  
25  
26  
27  
28

## IN AND FOR THE COUNTY OF ALAMEDA

**FILED**  
ALAMEDA COUNTY  
APR 9 - 2004  
CLERK OF THE SUPERIOR COURT  
By Handa G. Bayan  
DEPUTY

The People of the State of California, )  
Plaintiff, )

NO. 141033  
DEPT. NO. 6

Ivan Kilgore Defendant. )

PFN: BBVSSD  
DOB: 5/05/75  
CII: 22313173

**ORDER DIRECTING SUBMISSION OF BLOOD AND SALIVA SAMPLES**

The above-named defendant having been convicted of a violation of Section 187 of the Penal Code, **IT IS ORDERED** that said defendant submit two (2) blood samples and one (1) saliva sample for the purpose of **GENETIC MARKER TYPING** pursuant to Section 290.2 of the Penal Code.

The Alameda County Sheriff's Department is hereby ordered to comply with the sample collection procedures prescribed in 290.2 P.C. Such samples will be obtained in a medically approved manner.

If defendant is in custody, the sampling will take place as soon as possible, in time for defendant's next court appearance.

If defendant is out of custody at the time this order is issued, defendant will report to the Santa Rita Rehabilitation Center lobby with a copy of this order, Mondays, Tuesdays, or Wednesdays between the hours of 3:30 to 6:30 PM. In order to ensure time for sampling, out of custody offenders must appear by 5:30 PM. The Sheriff's Department will conduct the prescribed sample collection for all qualifying out of custody offenders at this place and time.

Defendant is: ☒ in custody [ ] out of custody.

The defendant is ordered to return to Court on \_\_\_\_\_ at \_\_\_\_\_, in Department No. \_\_\_\_\_ for \_\_\_\_\_.

4/9/04  
Date

[Signature]  
Judge of the Above-Entitled Court

Defendant appeared on \_\_\_\_\_ and complied with the Order.

\_\_\_\_\_  
Name and Title of Person Certifying Under Penalty of Perjury

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**Copies:** Orig.White:Ct.File/Green:Prob./Canary:DA/Pink:Bailiff/Golden:Defendant

000547

FILED  
ALAMEDA COUNTY

RECEIVED APR 9 - 2004

CLERK OF THE COURT

04 APR -8

By Handa G. Bays

Walter K. Pyle  
 (Bar No. 98213)  
 2039 Shattuck Avenue, Suite 202  
 Berkeley, CA 94704-1116  
 (510) 849-4424  
 Attorney for Defendant Ivan Kilgore

## IN THE SUPERIOR COURT OF ALAMEDA COUNTY, CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

IVAN KILGORE,

Defendant.

No. 141033

DECLARATION ON  
INABILITY TO PAY  
RESTITUTION FINE

Ivan Kilgore declares as follows:

I am currently incarcerated at Santa Rita County Jail, where I have resided since I was taken into custody in this matter, many months ago. I am unemployed and have been since my incarceration. I do not have any savings or other assets, and I do not know of any source of any substantial income or assets likely to become available to me in the foreseeable future.

I have been unable to afford an attorney, and because of my indigency an attorney was appointed by the court to represent me in this case.

If I am sentenced to prison, I have been informed and I believe that there are decreased opportunities for employment while incarcerated at the Department of Corrections, particularly when long sentences are involved, and that there are frequent lockdowns, where inmates are confined to their cells for long periods of time. I am also informed that the starting wages in the prison system, even if work can be obtained, is approximately 9¢ per hour.


**000548**

I am aware that the minimum restitution fund fine is \$200. However, I do not presently have the ability to pay a restitution fund fine which substantially exceeds that amount. Penal Code § 1202.4(c) states, "A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two-hundred-dollar (\$200) or one hundred-dollar (\$100) minimum."

I request that the court consider my inability to pay in setting the amount of the restitution fund fine.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

April 9, 2004

  
\_\_\_\_\_  
Ivan Kilgore  
Defendant

## RENE DAVIDSON COURTHOUSE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

000549

## CLERKS DOCKET AND MINUTES

DOCKET **KILGORE, IVAN** DEPT. **006** CRT. DATE/TIME **4/09/04 09:00**  
 EVENT NAME **KILGORE, IVAN DANNELL** RPT. NO. **00-64017** DOCK NO. **141033**

PROC. **R&S** CEN. **0373689** PFN. **BBV550** A DAY **11/01/00** SJ DATE **10/18/04**  
**COUNTS** PIC **00S00** AAG-OPD ACITY **OA**  
 CHARGES **1)F187 SC&USE PC 1 PR CONVICTED-J**

STAT SET BAIL **\$0.00** TOTAL DAYS IN CUSTODY: **1254**  
 BAIL STAT. BOND DT. BOND CO. DOB **05/05/75**  
 BAIL STAT. BOND DT. BOND CO. BAC  
 FINE/REST. DATE PAID REC. NO. **NORTH 1** TIME WAIVED **TWS**

## PROCEEDING

JUDGE **KENNETH KINGSBURY** DEP. D.A. **DARREL STALLWORTH**  
 DEP. CLERK **WANDA BOYNS** DEF. ATTY. **WALTER PYLE** ☐ Not Present  
 REPORTER **GERALD DOHRMANN** OTHERS

Defendant: ☒ Present ☐ Not Present ☐ Excused ☒ In Custody ☐ Pro Per  
☐ Interpreter is present. Language spoken: \_\_\_\_\_  
☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed  
☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)  
☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed  
☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilty  
☐ Stipulates to: lesser included / reasonably related offense of count(s) \_\_\_\_\_ to charge(s) \_\_\_\_\_  
 Time waived for: ☐ Preliminary Examination \_\_\_\_\_ days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn  
 Clauses: ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only  
☐ Priors: ☐ Stricken ☐ Admitted ☐ Denied  
☐ Probation: ☐ Conditional Sentence: ☐ Granted for \_\_\_\_\_ years/months ☐ See attached conditions  
☐ Revoked ☐ Restored ☐ Modified ☐ Extended to \_\_\_\_\_ ☐ Continue on same terms and conditions ☐ Terminated  
☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation  
☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control \_\_\_\_\_  
☐ No contact with / not to annoy \_\_\_\_\_, directly or indirectly: stay at least \_\_\_\_\_ away  
☐ Additional order(s): \_\_\_\_\_  
☐ Petition/Motion ☐ Granted ☐ Denied ☐ Withdrawn  
☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer ☐ \_\_\_\_\_  
 Restitution: ☐ Referred to \_\_\_\_\_ for Determination ☐ Ordered ☐ Reserved ☐ Modified  
☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered  
☐ Bench Warrant: ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ \_\_\_\_\_ ☐ No Cite Release ☐ Night Service

2X CERT-CRT:WMM PROB DENIED, FRML ARR FOR SENT WANTED

SENT SP LIFE W/O PAROLE; RF \$6,500.00 PC 1202.4(b); \$5,000.00  
 STATE VICTIMS COMP BOARD; \$1,162.54 SAMUEL + GERLEN ANDERSON; PC 2916;  
 ITS 1250 ACTUAL; APPEAL RIGHTS; REMANDED ALAMEDA COUNTY SHERIFF

ont: Date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept. \_\_\_\_\_ Proc.: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept. \_\_\_\_\_ Proc.: \_\_\_\_\_

C ; Codes: \_\_\_\_\_

DOCKET NAME **KILGORE, IVAN DANNELL** CT. DATE **4/09/04** DOCK NO. **141033**



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Dept. No. 006

Date: April 9, 2004

Hon. KENNETH R. KINGSBURY, Judge

Wanda Boyns, Dep. Clk.  
Gerald Dohrmann, Reporter

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff

Counsel appearing for Plaintiff Darryl Stallworth, Deputy  
District Attorney

vs.

Counsel appearing for Defendant Walter Pyle, Esq

IVAN KILGORE

Defendant

Probation Officer No Appearance  
appearing

Nature of Proceedings: REPORT AND SENTENCE

Case No. 141033

PFN: BBV550

CEN: 0373689

Defendant is present.

Probation is denied.

Defendant having been convicted by jury of the felony offense(s) shown below. The defendant waives formal arraignment for sentence and has no legal cause to show why the judgment of this Court should not be pronounced against him.

The Court pronounces judgment. Defendant is to be punished by imprisonment in the State Prison of the State of California for.

1. Defendant was convicted of the commission of the following felonies:

CNT.	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (Month/Date/Year)	CONVICTED BY			Con-current	Con-secu-tive	654 Stay
						Jury	Court	Plea			
	PC	187*	MURDER in the First Degree	2000	03-24-03	X				X	

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
01	12022.53(d)	S							

The defendant is sentenced to LIFE WITHOUT PAROLE.

Defendant is ordered to pay Restitution Fine of \$6,500.00 pursuant to Penal Code section 1202.4(b).

Defendant is ordered to pay the State Victim Compensation Board \$5,000.00, Claim #608643.

Defendant is further ordered to pay \$1,162.54 to Samuel and Gerlen Anderson, 873 30<sup>th</sup> Street, Oakland, CA 94608.

Defendant is to submit to blood/saliva sample for DNA testing pursuant to Penal Code section 296.

Defendant has been in custody for 1250 actual days as a result of the same criminal act for which he has been convicted.

Defendant is advised of his appeal rights.

Defendant is remanded to the custody of the Sheriff of the County of Alameda to be delivered by him to Director of Corrections at the California State Prison at San Quentin, San Quentin, California.

000551

## ABSTRACT OF JUDGMENT – PRISON COMMITMENT - INDETERMINATE

[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-292 ATTACHED]

CR-292

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA JUDGE OR JUDICIAL DISTRICT <b>RENE' C. DAVIDSON</b>			
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: <b>IVAN KILGORE</b>	DOB: <b>05-05-75</b>	<b>141033</b>	<b>FILED</b> ALAMEDA COUNTY APR 9 - 2004 CLERK OF THE SUPERIOR COURT By <i>Wanda J. Boyne</i> DEPUTY
AKA: CII#: <b>22313173</b> BOOKING INFORMATION: PFN: <b>BBV550</b> CEN: <b>0373689</b>	<input type="checkbox"/> NOT PRESENT		
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT	<input type="checkbox"/> AMENDED ABSTRACT		
DATE OF HEARING <b>04-09-04</b>	DEPT. NO. <b>006</b>	JUDGE <b>KENNETH R. KINGSBURY</b>	
CLERK <b>Wanda Boyne</b>	REPORTER <b>Gerald Dohrmann</b>	PROBATION NO. OR PROBATION OFFICER <b>No Appearance</b>	
COUNSEL FOR PEOPLE <input checked="" type="checkbox"/> Deputy District Attorney <input type="checkbox"/> State Attorney General <b>Darryl Stallworth</b>	COUNSEL FOR DEFENDANT <input type="checkbox"/> Deputy Public Defender <input checked="" type="checkbox"/> Private Counsel <b>Walter Pyle</b>		

## 1. Defendant was convicted of the commission of the following felonies:

- ☐ Additional counts are listed on attachment  
 \_\_\_\_ (number of pages attached)

CNT.	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (Month/Date/Year)	CONVICTED BY			Con-current	Con-soci-ate	654 Stay
						Jury	Trials	Prob			
01	PC	187*	MURDER in the First Degree	2000	03-24-03	X				X	
					- -						
					- -						
					- -						
					- -						
					- -						

## 2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
01	12022.53(d)	S							

## 3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTION OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

Defendant was sentenced to State Prison for an INDETERMINATE TERM as follows

4. ☒ LIFE WITHOUT THE POSSIBILITY OF PAROLE on counts **ONE**
5. ☐ LIFE WITH THE POSSIBILITY OF PAROLE on counts \_\_\_\_
6. a. ☐ 15 years to Life on counts \_\_\_\_ c. ☐ \_\_\_\_ years to Life on counts \_\_\_\_  
 b. ☐ 25 years to Life on counts \_\_\_\_ d. ☐ \_\_\_\_ years to Life on counts \_\_\_\_  
 PLUS enhancement time shown above.
7. ☐ Additional determinate term (see CR-290).
8. Defendant was sentenced pursuant to ☐ PC 667(b)-(i) or PC 1170.12 ☐ PC 667.61 ☐ PC 667.7 ☐ other (specify):

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for indeterminate sentences. Attachments may be used but must be referred to in this document.

PEOPLE OF THE STATE OF CALIFORNIA vs.  
DEFENDANT: IVAN KILGORE

141033

-A

-B

-C

-D

## 9. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

## a. Restitution Fine(s):

Case A: \$6,500.00 per PC 1202.4(b) forthwith per PC 2085.5; \$0 per PC 1202.45 suspended unless parole is revoked.  
 Case B: \$ per PC 1202.4(b) forthwith per PC 2085.5; \$ per PC 1202.45 suspended unless parole is revoked.  
 Case C: \$ per PC 1202.4(b) forthwith per PC 2085.5; \$ per PC 1202.45 suspended unless parole is revoked.  
 Case D: \$ per PC 1202.4(b) forthwith per PC 2085.5; \$ per PC 1202.45 suspended unless parole is revoked.

## b. Restitution per PC 1202.4(f):

Case A: \$ Amount to be determined to: ☐ victim(s)\* ☐ Restitution Fund  
 Case B: \$ Amount to be determined to: ☐ victim(s)\* ☐ Restitution Fund  
 Case C: \$ Amount to be determined to: ☐ victim(s)\* ☐ Restitution Fund  
 Case D: \$ Amount to be determined to: ☐ victim(s)\* ☐ Restitution Fund

(\*List victim name(s) if known and amount breakdown in item 11, below.)

## c. Fine(s):

Case A: \$ per PC 1202.5. \$ per VC 23550 or days ☐ county jail ☐ prison in lieu of fine ☐ CC ☐ CS  
 Case B: \$ per PC 1202.5. \$ per VC 23550 or days ☐ county jail ☐ prison in lieu of fine ☐ CC ☐ CS  
 Case C: \$ per PC 1202.5. \$ per VC 23550 or days ☐ county jail ☐ prison in lieu of fine ☐ CC ☐ CS  
 Case D: \$ per PC 1202.5. \$ per VC 23550 or days ☐ county jail ☐ prison in lieu of fine ☐ CC ☐ CS

## d. Lab Fee and Drug Program Fee:

Case A: Lab Fee: \$ per HS 11372.5(a) for counts ☐ Drug Program Fee of \$150 per HS 11372.7(a).  
 Case B: Lab Fee: \$ per HS 11372.5(a) for counts ☐ Drug Program Fee of \$150 per HS 11372.7(a).  
 Case C: Lab Fee: \$ per HS 11372.5(a) for counts ☐ Drug Program Fee of \$150 per HS 11372.7(a).  
 Case D: Lab Fee: \$ per HS 11372.5(a) for counts ☐ Drug Program Fee of \$150 per HS 11372.7(a).

## 10. TESTING

☐ AIDS pursuant to PC 1202.1 b. ☒ DNA pursuant to PC 296 c. ☐ other (specify):

## 11. OTHER ORDERS (specify): Defendant to the State Victims Compensation Board, \$5,000.00, Claim #608643.

Defendant further ordered to pay \$1,162.54 to Samuel and Gerlen Anderson, 873 30<sup>th</sup> Street, Oakland, CA 94608

## 12. EXECUTION OF SENTENCE IMPOSED

a. ☒ at initial sentencing hearing. d. ☐ at resentencing per recall of commitment. (PC 1170(d).)  
 b. ☐ at resentencing per decision on appeal. e. ☐ other (specify):  
 c. ☐ after revocation of probation.

## 13. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT			CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT		
A	1250	1250	0	<input type="checkbox"/> 4019	<input checked="" type="checkbox"/> 2933.1	C			<input type="checkbox"/> 4019	<input type="checkbox"/> 2933.1	
B				<input type="checkbox"/> 4019	<input type="checkbox"/> 2933.1	D			<input type="checkbox"/> 4019	<input type="checkbox"/> 2933.1	

DATE SENTENCE PRONOUNCED:

04-09-04

TIME SERVED IN STATE INSTITUTION:

☐ DMH☐ CDC☐ CRC

14. Defendant is remanded to the custody of the sheriff: ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays and holidays.  
 To be delivered to: ☐ the reception center designated by Director, California Department of Corrections: ☒ San Quentin ☐ Chowchilla  
☐ other (specify):

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE

Wanda Boyns

DATE

04-09-04

000553

Walter K. Pyle  
(Bar No. 98213)  
2039 Shattuck Avenue, Suite 202  
Berkeley, CA 94704-1116  
(510) 849-4424  
*Attorney for Defendant Ivan Kilgore*

**FILED**  
ALAMEDA COUNTY

APR 09 2004

CLERK OF THE SUPERIOR COURT  
By Maria Mayuzo Deputy

**IN THE SUPERIOR COURT OF ALAMEDA COUNTY, CALIFORNIA**

PEOPLE OF THE STATE OF CALIFORNIA,

*Plaintiff,*

v.

IVAN KILGORE,

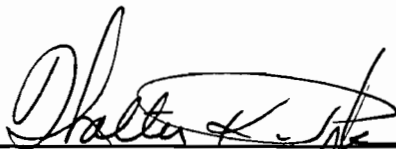
*Defendant.*

No. 141033

NOTICE OF APPEAL

Defendant Ivan Kilgore hereby appeals this court's judgment and sentence entered April 9, 2004.

Defendant requests that the court appoint an attorney on appeal. Defendant is indigent, incarcerated, and counsel was appointed for him in the Superior Court



Ivan Kilgore  
*Defendant*



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

000554

THE PEOPLE OF THE STATE OF CALIFORNIA

VS

KILGORE, IVAN

DEFENDANT

**FILED**  
ALAMEDA COUNTY

APR 9 - 2004

CLERK OF THE SUPERIOR COURT  
By Handa J. Byrne DEPUTY

**PROBATION OFFICER'S REPORT AND RECOMMENDATION**

EVENT NAME **KILGORE, IVAN DAWNELL**C.I.I. NAME **KILGORE, IVAN D**JUDGE **KINGSBURY**ADDRESS UnknownDEPARTMENT NO. **006**D.O.B **05/05/75** (AGE: **27** )DOCKET NO. **141033**SEX **MALE** ETHNIC **BLACK**REFERRAL DATE **03/24/03**HT. **5FT 9IN** WT. **165** HAIR **BLACK**C.I.I. NO. **22313173**COURT DATE **06/13/03**I.D. NO. **0373689**DEFENSE ATTORNEY **DEBORAH LEVY**PFN. **BBV550**

REPORT BY Jeff Wilson dja  
DEPUTY PROBATION OFFICER

CHARGES FILED **PC 187 SC&USE 1/PR F**CURRENT CHARGES **PC 187 SC&USE 1/PR F**CHARGE STATUS **Jury Trial**DATE AND PLACE OF **ARREST**ARREST AGENCY **OAKLAND PD****11/01/00 PALM AND HILLSIDE OA**CURRENT CUSTODY STATUS **IN CUSTODY**DAYS IN JAIL THIS CHARGE 955CUSTODY STATUS THIS CHARGE **IN CUSTODY**

O.R. ON

BAILED ON

AMOUNT \$

MARRIED: Yes Unknown No unknownLIVES WITH unknownINCOME SOURCE unknown

KILGORE, IVAN

Docket #: 141033

CRIMINAL HISTORY

Juvenile: The defendant has no known Juvenile Court findings.

Adult:DateOffense and Disposition

11-26-95  
Oklahoma

Offense: 1<sup>st</sup> degree manslaughter

Disposition: 09-11-97 4 years prison.

Pending Criminal Cases: The defendant has a pending charge of section 4573.6(felony) of the Penal Code. The case is set for DISP on 06-06-03 in Pleasanton Department 701 at 9:00 a.m..

Prior Probation History: The defendant has no known prior probation history.

Institutional and Parole History: The defendant was sentenced to 4 years prison out of Seminole County in Oklahoma in 1997 following a conviction of 1<sup>st</sup> degree manslaughter.

PRESENT OFFENSE

Offense Summary: According to Oakland Police report #00-064017 on 07-16-00 at approximately 05:57 p.m. officers responded to a report of a shooting with at least one person down. As officers arrived they found the victim, William Anderson, lying on the ground and not moving. He did not have a pulse and he had a pool of blood on his shirt that appeared to be coming from a gun shot wound to his chest. An officer began CPR until medical personnel arrived. At 06:35 p.m. the victim was pronounced dead.

Witnesses reported that an individual known as "Ivan" was the person responsible for shooting the victim. It was reported that Ivan was in the backseat of a gray Cadillac when he pointed a shotgun out the window of the vehicle and shot the victim. The victim's girlfriend advised that the victim told her that he saw Ivan in the vehicle prior to his being shot. She added that he also told her that he and Ivan had been having problems and that they used to be friends.

The District Attorney reported that the defendant saw the victim while driving to Home Depot. He then went home and retrieved his shotgun and had Raymond Jones drive him back to where the victim was while he rode in the back seat. The defendant then told the driver to slow down when they got closer to the victim. The defendant then pulled out his shotgun, stared at the victim, and stated, "What's up now, punk!" He then pulled the trigger and the victim was hit in the stomach and died shortly thereafter. The District Attorney also reported that the defendant and victim had previously been in fist fights and that one of the fights left the defendant with a black eye.

Codefendant(s): None.



KILGORE, IVAN

Docket #: 141033

Negotiated Plea: According to the District Attorney's letter the defendant was found guilty of 1<sup>st</sup> degree murder and found the special circumstances of "Drive by Shooting" to be true and it is mandated by law that the defendant be sentenced to prison for life, without the possibility of parole.

Attorney Statements:

District Attorney: Attached.

Defense Attorney: Not received.

Defendant's Statement Re Offense: The defendant refused to participate in the interview process.

Defendant's Statement Re Probation/Diversion: Not applicable.

Defendant's Statement of Assets: Not yet received.

Victim Information: See Confidential Information.

Fines and Fees: The defendant is subject to the standard fines and/or fees for this offense. Further, the Probation Officer has determined that the defendant does not have the ability to pay a probation service fee pursuant to Penal Code Section 1203.1b at this time.

Compliance with Section 296 of the Penal Code: Blood and saliva samples have not yet been submitted.

Time in Custody: 955 days.

<u>Arrest</u>	<u>Release</u>	<u>Status</u>	<u>Total</u>
11-01-00		held	955 days.

SOCIAL FACTORS

The undersigned went to interview the defendant at Santa Rita jail on 05-28-03. The defendant failed to cooperate with the interview process as he refused to answer any questions.

SENTENCING FACTORS

Rule 413: Probation Eligibility When Probation is Limited:

- (a) The defendant appears to be statutorily ineligible for because of the provisions of section 1203.06 (a)(1) of the Penal Code.

Rule 414: Criteria Affecting Probation:

Because the defendant is ineligible for probation, these factors will not be addressed.

KILGORE, IVAN

Docket #: 141033

Rule 421: Circumstances in Aggravation:

- (a) (1) The crime involved great violence as the defendant shot and killed the victim in a drive by shooting.
- (a) (3) The victim was particularly vulnerable as he was standing on the corner with his girlfriend and was not armed.
- (a) (8) The manner in which the crime was carried out indicates planning, sophistication or professionalism.
- (b) (3) The defendant has served one prior prison term.

Rule 423: Circumstances in Mitigation:

None of the factors in regard to the crime or to the defendant appear applicable.

EVALUATION

The defendant is an ineligible and unsuitable candidate for probation. The District Attorney reported that the defendant has been convicted of 1<sup>st</sup> degree murder with the Special Circumstance of "Drive by Shooting" and that it is mandated by law that the defendant be sentenced to prison for life, without the possibility of parole. This disposition appears to be appropriate. It should be noted that the defendant has a prior conviction for 1<sup>st</sup> degree manslaughter that he was sentenced to 4 years state prison for in 1997 in Oklahoma.

The defendant refused to answer any questions during the interview process for the sentencing report and the social factors section could not be completed. The victim's family will be present at sentencing and several family members and friends would like to read impact statements.

RECOMMENDATION

It is respectfully recommended that probation be denied, and that a restitution fine in the amount of 10,000.00 be imposed pursuant to Section 1202.4(b) of the Penal Code.

If the sentence includes a period of parole, it is recommended that an additional restitution fine be imposed pursuant to Section 1202.45 of the Penal Code in the same amount, and that the fine be suspended unless parole is revoked.

It is further recommended that the defendant be ordered to pay restitution of \$5,000.00 to the VCB program and \$1,162.54 to Samuel and Gerlen Anderson as specified under Confidential Cover of the report; said order shall be enforceable as a civil judgment.

It is further recommended that the defendant participate in an anger management program while in prison.

KILGORE, IVAN

Docket #: 141033

000558

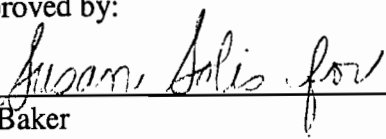
Defendant shall submit blood and saliva samples pursuant to section 296 of the Penal Code.

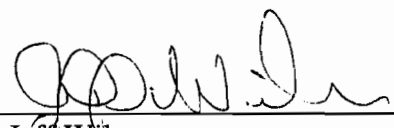
Date typed: 05-29-03  
JW

Respectfully submitted,

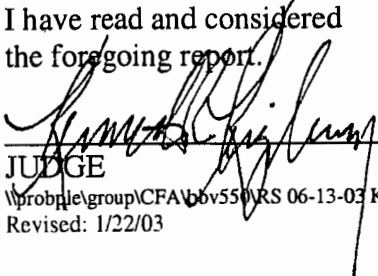
WAYNE G. TUCKER  
INTERIM CHIEF PROBATION OFFICER

Approved by:

  
\_\_\_\_\_  
Pat Baker  
Unit Supervisor

By:   
\_\_\_\_\_  
Jeff Wilson  
Deputy Probation Officer

I have read and considered  
the foregoing report.

  
\_\_\_\_\_  
JUDGE  
\\probbie\group\CFA\bbv55\RS 06-13-03 KILGORE.doc  
Revised: 1/22/03

000559

**CONFIDENTIAL RECORD INFORMATION**

PURSUANT TO TITLE 42, CHAPTER 1, SUBCHAPTER A, OF FEDERAL REGULATIONS AND SECTIONS 5328-5330 CALIFORNIA WELFARE AND INSTITUTIONS CODE PATIENT WAIVER OF CONFIDENTIALITY, THIS INFORMATION IS RESTRICTED TO THE COURT, DISTRICT ATTORNEY, DEFENSE COUNSEL AND PROBATION/PAROLE.

TO: Court Rene C. Davidson Courthouse Department No. 006 Court Date 6-13-03

RE: Docket No. 141033 PFN No. BBV550 CEN No. 0373689

Defendant KILGORE, IVAN

FROM: Deputy Probation Officer Jeff Wilson

240-744

KILGORE, IVAN

Docket #: 141033

000560

Victim Information:

Victim's Notification: On 04-09-03 the undersigned mailed restitution information along with the defendant's sentencing date and custody credits to Samuel and Gerlen Anderson. They are the parents of the deceased, William Anderson. The undersigned also spoke with Mr. and Mrs. Anderson by telephone on numerous occasions. The Andersons' filed a claim with the VCB program and the program paid out \$5,000.00 for funeral expenses. The Andersons are also requesting \$1,162.54 in wage losses. They have submitted their documentation.

Victim's Statement: Mrs. Anderson reported that she and her husband along with other family members and friends will attend the sentencing hearing. She advised that six people would like to read statements at the hearing. The statements that they wish to read are also attached.

Restitution: It will be recommended that the defendant pay \$5,000.00 in restitution to the VCB program and \$1,162.54 to Samuel and Gerlen Anderson.

**000561**

May 20, 2003

RE: Ivan Kilgore  
PFN: BBV550  
NO: 141033  
PLEA: Jury Verdict of 1<sup>st</sup> degree Murder  
R&S: June 13, 2003

Adult Probation Office  
400 Broadway  
Oakland, Ca. 94607

The following information is provided to assist you in your investigation concerning the above-named defendant.

**SUMMARY OF OFFENSE:**

In the Spring of 2000 defendant and victim (William Anderson) had two maybe three fist fights, one of which left defendant with a black eye. Although victim lived in Fresno he would quite often visit his parents who lived near 30<sup>th</sup> and San Pablo Ave. in Oakland. On the afternoon July 16, 2000 while driving to Home Depot defendant spotted victim hanging out near the corner of 30<sup>th</sup> and San Pablo with his girlfriend, his cousin, and his best friend. Defendant made a U-turn and headed back to his apartment where he retrieved his shotgun and had Raymond Jones drive him back to where the victim was.

As they got closer to the victim, defendant told the driver to slow down. Defendant then pulled out his shotgun, stared at victim, and stated, "What's up now, punk!" Defendant then pulled the trigger. Victim was hit in the stomach and died shortly thereafter.

**VICTIM INFORMATION:**

Victim's parents Gerlin and Samuel Anderson were at the trial everyday and were instrumental in helping the prosecution bring defendant to justice.

**SIGNIFICANT CRIMINAL HISTORY:**

1997 1<sup>st</sup> degree Manslaughter from Seminole County, Oklahoma, 4yrs Sp



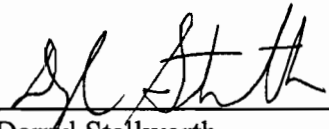
**RECOMMENDATION:**

The jury found defendant guilty of 1<sup>st</sup> degree Murder and found the Special Circumstance of "Drive by Shooting" to be true. Consequently it is mandated by law that defendant be sentenced to prison for life, without the possibility of parole.

Respectfully yours,

THOMAS J. ORLOFF  
District Attorney

By:

  
\_\_\_\_\_  
Darryl Stallworth  
Deputy District Attorney

000563

ANDERSON STERLING FLORAL & BRIDAL DESIGN  
3740 Grand Ave.  
Oakland, Ca 94610  
Phone: (510) 763-1778  
Fax: (510) 763-1778

FAX COVER SHEET

TO: Jeff Wilson  
COMPANY: County of Alameda Probation Department  
PHONE: (925) 803-7064  
FAX: (925) 551-6798  
FROM: Samuel & Gerlen Anderson  
FAX: (510) 763-1778  
DATE: May 21, 1903

---

Here are copies of our witness impact statements &  
A copy of the income that I lost during the days of the  
trial. From FTD (Florist Transworld Delivery) These orders had to be  
Canceled and also suspenden for the days of the trial.

If there are any additional question please feel free to call me  
At (510) 763-1778.

Thank you

*14 pgs including cover sheet*

000564

ALAMEDA COUNTY PROBATION DEPARTMENT RESTITUTION CLAIM FORM

CASE NAME: Kilgode, Ivan  
PROBATION OFFICER: Jeff Wilson  
TELEPHONE: 925/803-7064  
FAX: 925/551-6798

PROBATION CASE NUMBER: 141033  
OFFENSE DATE: 11-1-00  
OFFENSES: PC 187 Felony  
DOCKET NUMBER: 141033

VICTIM: Samuel + Gerlen Anderson

**CHECK ALL BOXES THAT APPLY**

- ( ) I do not claim restitution.  
( ) I plan to seek recovery through civil suit and do not wish to make a claim.  
( ) I have filed, or will file, a claim through the State Victims of Crime Program.  
( ) I have received \$ from the State Victims of Crime Program.  
( ) I request restitution as documented below.

**PROPERTY/WAGE LOSS (including base salary and commission income)**

Description	Current or Replacement Value
<u>Comm. Sales</u>	\$ <u>1162.54</u>
	\$
	\$
	\$
	\$

**PERSONAL INJURY/TREATMENT**

Description	Cost of Treatment
	\$
	\$
	\$
	\$
	\$

Is treatment ongoing? ( ) Yes ( ) No

Restitution should be paid to (PRINT CLEARLY)

TOTAL CLAIM \$ 1162.54

Mr. Samuel + Gerlen Anderson  
Name

CLAIM: Under penalty of perjury, I declare that all statements on this form are correct.

873 30th Street  
Street Address

M. Anderson 5/21/02  
Signature Date

Oakland, Ca 94608  
City/State

Home Phone: 510-452-3982

Work Phone: 510-763-1278

Business Reference Number (If any)

Documentation Required: Attach copies of bills, receipts, estimates, employer's verification of wage loss and commission income for the 12 months preceding the offense. KEEP ORIGINALS FOR YOUR RECORDS

000565



**FLORIST'S TRANSWORLD  
DELIVERY**  
PO BOX 7033  
DOWNERS GROVE, IL 60516-7033  
1-800-788-6000

**REPORT OF ORDERS FILLED**

DO NOT REPORT INTERFLORA ORDERS ON THIS REPORT  
DO NOT REPORT CREDIT CARD ORDERS ON THIS REPORT

ANDERSON, STERLING FLORAL  
3740 GRAND AVE  
OAKLAND CA 94610

Year 03-8172  
Member No.

*Frank Durm*

Report No. 034  
**SUSPENDED OR  
CANCELED**  
CIRCLE 9 IF HOLIDAY SPECIAL

DO NOT REPORT MERRYMAID ORDERS ON THIS FORM. ALL MERRYMAID  
ORDERS ARE AUTOMATICALLY REPORTED TO THE CLEARING HOUSE.

Date of This Report March 10, 11, 13, 14, 15, 18TH, 2008  
MONTH - DAY - YEAR

OCCASION CODE	
1. Anniversary	2. Birthday
3. Christmas	4. Mother's Day
5. Father's Day	6. Valentine's Day
7. Wedding	8. Other

ITEM NO.	MEMBER NUMBER (OR FLORIST NO.)	DELIVER DATE (MONTH - DAY)	CHECK IF THIS IS A RE-ORDER	RECIPIENT - Full Name (OR FLORIST NO.)	OCCASION CODE	GROSS DOLLAR AMOUNT (INC. DEL. CHARGE)
01	05-8172	3/14	✓	NANCY PEREZ	8	59.99
02	90-8400	3/11	✓	ERIN LITTLE	8	49.99
03	90-8400	3/11	✓	SARAH MUELLER	8	44.99
04	90-8400	3/10	✓	CHRISTINE	8	48.99
05	90-8400	3/10	✓	LUCY BELLAMY	8	54.49
06	04-0667	3/12	✓	ALICE JAKEL	8	57.99
07	05-7778	3/13	✓	Judge Roletson	8	72.00
08	90-0704	3/14	✓	EMILIE SHEA	5	59.99
09	05-8972	3/14	✓	TRICIA FREEMAN	8	94.70
10	90-8400	3/14	✓	TINA LOC SIN	8	69.99
11	90-8400	3/14	✓	BRANDI BRYAN	3	68.49
12	90-8400	3/13	✓	STACY STUDEBAUD	7	64.99
13	909077	3/14	✓	GILLIAN BRUCE	8	67.99
14	90-8400	3/18	✓	LAURA RAMBIN	8	60.99
15	90-8400	3/18	✓	BOB & CICI HOOVER	8	40.99
16	90-8400	3/18	✓	OLIVE SANTOS	8	82.99
17	90-8400	3/18	✓	JACQUELINE BRUNN	8	59.99
18	90-8400	3/18	✓	JOCELYN MANIULT	8	64.99
19	37-3753	3/18	✓	QUEYEN PHAN	8	37.99
20						1,162.54

Check Here for Receipt: Envelopes ☐ Sheets ☐ Total Amount: \$ 1,163.44  
MAIL ORIGINAL (WHITE) COPY TO THE NO. ADDRESS ABOVE. RETAIN DUPLICATE (YELLOW) COPY FOR YOUR FILES.

111.2

000566

Bu  
Amus

FIRST OF ALL I'D LIKE TO TAKE THIS OPPORTUNITY TO THANK THE OAKLAND POLICE DEPARTMENT AND THE CALIFORNIA SUPERIOR COURT FOR THEIR PATIENCE AND PROFESSIONALISM IN THE CAPTURE AND PROSECUTION OF THIS INSIPID LITTLE MAN IVAN KILGORE.

AS A RESIDENT OF OAKLAND AND A NATIVE CALIFORNIAN, I'M PROUD TO SAY OUR SYSTEM IN CALIFORNIA WORKS. I'M SHURE IVAN KILGORE IS COMING TO THE REALITY OF HOW WELL IT WORKS.

IVAN KILGORE IT MUST BE HELL SITTING IN YOUR SEAT WONDERING WHAT THE JUDGE IS THINKING, KNOWING THAT HE REPRESENTS ~~OUR~~ THE PEOPLE OF OUR COMMUNITY.

YOUR HONOR IVAN KILGORE HAS BEEN CONVICTED OF MURDERING MY NEPHEW WILLIAM ANDERSON. I'VE LEARNED THAT HE ALSO MURDERED A MAN IN OKLAHOMA. IN MY OPINION IVAN KILGORE IS NO LESS OR MORE THAN A LOWLIFE, NO GOOD, MURDEROUS SON OF A BITCH THAT SHOULD BE EXECUTED BY THE STATE OF CALIFORNIA.

YOUR HONOR IS MORE EDUCATED IN THESE MATTERS AND I PUT MY FAITH IN THE SYSTEM. ~~SO~~ I'M SHURE YOUR HONOR WILL —

000567

BW

AND FAIR  
dETERMIN AN APROPRIATE SENTENCE

~~THANK YOU~~  
THANK YOU  
Bill Ward



000568

FROM : 0000000000 00000000 0000000000

FAX NO. : 510 747 6335

May. 13 2003 07:24AM P2

**Fred's Statement:****William Anderson****William Bentley Anderson**

Was murdered by this man who no longer has a name. Forever he will be known as William Bentley Anderson's Murderer, A killer. I would rather that he did not but if this no named murder must live the rest of his life I want it to be in torment. I want him to wake up every morning and remember the man my brother "William Anderson". I want him to suffer in a living hell were his mental and physical suffering could only be released by his own death. And in that death be victimized by the devils henchmen. I want him to lay awake at night tortured by his nightmares and I want him to remember William Anderson, William Bentley Anderson.

To the no named murderer of William Anderson, I want this name will live with you, haunt your dreams, torture your soul, crush your hopes, be your fears. To the end of your life you are nothing, will always be nothing with no name. The only name that will matter in your world is "William Anderson". You may have taken his physical life, but by doing this you sacrificed your soul.

May the demons of hell have their way with you for eternity.



000569

2 min

**This is for Will**

Good morning Judge \_\_\_\_\_ and thank you for the opportunity to address the court and all those here today. I have had the pleasure of knowing William Anderson Jr., and his family living next door to their home in Oakland. As a native of San Francisco and presently a resident of Oakland, I'd like to thank the Oakland police department, law enforcement and judicial system for the guilty verdict of Ivan Kilgore. Ivan Kilgore took a very young life in a most cowardly way. William was barely 21 years old when this tragic incident took place and after almost three years, this sordid conclusion will not bring him back. William gone is a loss of a young man's life, a pain that will never go away.

During the extensive court hearings, arraignments, and trial, I've often thought how Ivan Kilgore could turn to William's family and just smile? Ivan Kilgore, your arrogance will soon meet others inside the walls of the State Penitentiary. Ivan Kilgore, will you be smiling there like you have been in the court room over the past two and a half years? A tough guy such as yourself, who couldn't accept losing a fist fight, and couldn't say, "peace Brother William, lets' be friends" is a weak and pitiful individual. It's too late to say your sorry, if that thought was ever in your mind. Too much time has passed to make a sincere word in that direction. Hell awaits you.

William Anderson, Jr. could be alive today if you fessed up to the misunderstanding. You could have been "big enough" and let it go. Instead, you sought revenge, by shooting William in his back. Your disrespect of life, of yourself, has affected not only the loss of William, but the loss of a family member, a friend and now you will pay with your own life. Ivan Kilgore, you should have been put away a long time ago.

I really hope that you are tougher than you think you are, because where you're going you are really going to need to be just that and more. Have you heard the term "fight you tooth and nail"? If you haven't, you will have time to think about it and soon do it.

Judge \_\_\_\_\_, the court, William's family and friends, I continue to be in shock at the loss of this young man's life. William did not deserve to die this way. William had dreams for a future, a girlfriend, his buddies and a loving, giving family. Ivan Kilgore, you damaged a lot of people's lives.

Right now, William is looking down from up above at all of us in this court room, and he is smiling because he is at peace.

You took a life, you do life!

Aloha, Ivan Kilgore, this is just the beginning of the end.

Thank you your honor, members of the court room, prosecution and the jury and William's family

Sincerely,

Riki Paalapa

000570

**NO WORRIES  
BY ROCHELLE WILLIAMS  
(FRIEND OF FAMILY)**

This is a little sonnet for Mr. Kilgore called No Worries

These are just a few things in life you no longer have to worry about.

No wife or congenial visits  
No Children or additional if you have any  
No more meaningful holidays  
No more meaningful birthdays  
No car notes, therefore no car  
No creditors bugging you  
No utility bills  
No cutting grass on weekends  
No working in or on apartment buildings  
You might see your mother or sister maybe  
No more buying brooms at home depot  
No more 911 calls to report your car stolen  
No more trips to Wewoka, Oklahoma or anywhere  
else for the matter  
Best of all no more lives taken by you & no more drive-bys.

Congratulations for you have no more of life's meaningful worries.

PS The one thing you must worry about is dropping the soap.

Your Honor I ask that the maximum sentence is given to this person and he gets just what he deserves.

Thank You

000571

## Sam & Gerlen Anderson's IMPACT STATEMENT

To your Honor Judge Kingsbury & the officers of the court.

If anyone would have told me I would be standing here today talking with the murderer of my son I would have never believed them.

I looked into the dictionary to find a discription of what you were and I found.

Ignorance	Violent
Visciousness	Vengeful
Unforgiving	Spitefulness
Inhuman	Mean
Cruel	Heartless
Gutless	Mindless

And an assassin. Oh and one more (NUMB NUT) I just threw that one in to describe your future.

Our son will never see the Ocean, but neither will you.

Our son will never see the world grow and change around him but neither will you.

Our son will never have children – we will never be grandparents from this wonderful young man. And if you have any children neither will you.

Our son is dead by your hand.

You are dead by your own hand. For you will loose your name and become a number, you will loose your dignity and become –whatever- .

I am now a mother a peace, not because by son is gone but because I know God holds us in the palm of his hand and delt out the justice you deserve.

Your mother if she is still living and cares about you in any shape form or fashion will be forever in torment with what she bore into this world. Instead of a shining star she was delt a demon of evil.

My husband Sam and I ask you Judge Kingsbury no we plead with you Judge to place this (BEAST) away for the remainder of his natural life in hell's outhouse wherever that may be, where no one but God will be able to show him mercy.

Oh I forget that God does not dwell in unclean places or an unclean heart.

My husband and myself and all of William Bentley Anderson's family and friends  
Wish to thank the Jurors for the verdict.

000572

We would like to thank Attorney Darrel Stallworth for speaking for our son who had no voice, and to Judge Kingsbury for the opportunity to relieve our hearts and the final justice.

God surely answers prayer.

000573

IMPACT STATEMENT  
BY  
PEARL J. WARD (GRANDMOTHER)

First I would like to thank the court for allowing me this opportunity to speak.

I was born on January 1, 1930, and for my (73 ) of my life on this earth I have been a Christian.

I have heard about Satan, read about satin and the eviiness that he can pocess, but up until now have I seen sating face to face.

The organ in your chest that beats as a heart, harbors, cowardess, hate, malice and a true distain for respect for human life.

The devastation that you wrought is unimaginable.

William was a young man that traveled with his parents, brother and myself, all over these United States. William was a avet toy collector and he saw the world as a wonderful place, full of promise for his future.

Going to the movies was his favorite thing to do besides playing video games with his brother Fred. He was standing on the corner to go see the X-Men movie when you murdered him.

The love for my grandson was indescribable. Because of what you did there is a void that can never be filled, at Christmas, birthdays, family gatherings, concerts and just plain good old life.

000574

You murdered my grandson, you tried to lie about it but the court did not buy it.

When I wish upon a star I will be glad to know where you are and to know that dreams do come true.

You wanted the worst that life had to offer. So now your honor along with the State of California and my families support we want to make his wish come true.

We want to make sure that this man (for all practice purposes) never sees anything but a cell for the rest of his natural days on this earth.

Thank you your Honor for your justice and I would like to thank Mr. Stallworth for your patience and understanding.

For I truly loved my grandson and he loved me.

*At 15. Tom J. Ward*



Will's Auntie - Shook Williams

000575

Today I stand here not full of joy or glee that you are being sentenced but I'm here to speak for the who can not speak for himself. William Bentley Anderson (affectionately known as) My Baby. I've called him that every since he came into this world sucking on his two fingers to the time you murdered him. You took away my William you heartless, cruel piece of wasted flesh and blood.

I will not address you by name because I have no respect for you. You are nameless as far as I'm concerned your just another part of the ecosystem an animal killing the next in line.

How your mother could ever spread her legs and produce a man child as evil such as you I'll never know. She would have done better keeping the placenta than bringing you into this world. What a waste of the African American man. Another damn static. How ignorant. Now you will rot in jail or die and for what because you couldn't be a man with intelligence and deal with my Baby with your mind. NO, you had to MURDER him.

Obviously you have no idea of what love is. And to even think you know God is an oxymoron of great proportions. I have had practically three years to relive this horrific event. And standing here today brings it all back again. I have prayed for this nightmare to end but it won't because the harsh reality is that this is not a dream any of us who loved my Baby can awaken. This act of cruelty is imprinted in our minds and in our hearts. I could stand here and curse you and hate you. But I am going to do what God told me to do. It is the hardest challenge I have ever had in my life. But I'm going to do it.

So against my own will, but in my almighty, omnipresent, and all knowing God's will I'm going to do what I need to do to heal. And that is I pray that you not get the death penalty but rather you get life imprisonment. And while you go through your 30's, 40's, 50's, 60's, 70's and hopefully your 80's you'll find God in that cold jail cell. Not like some of the inmates who claim they know God because it's the in thing to do. No! No! No! I pray you really find God so that you can know what true agape love is. Then and only then will you be able to understand what you've done. What I've come to realize about you is that you are an empty shell which means you have no life. But I want you to have life. I want you to be above the your grave.

This is your second murder which tells me all you know is evil and hate therefore you are desensitized from the hurt and pain you have caused us. Ohhhhhhhh but when you get it when you find out who God really is that is when your torture will begin. I pray you spend every waking and sleeping moment thinking of **William Bentley Anderson**. That that day replays and replays and replays over and over again in your mind until you won't be able to think of anything else but **William Bentley Anderson**. Then and only then will you begin to feel. I pray every breathe you take will be thought of the breath **William Bentley Anderson** could have had. I pray every step you take will be thought of the steps **William Bentley Anderson** could have had. I pray every laugh you take will be thought of the laughs **William Bentley Anderson** could have had. I pray that you watch the seasons come and go knowing you'll never enjoy them like **William Bentley Anderson** and I want you to watch the sunrise and set knowing you'll never be able to enjoy it like **William Bentley Anderson**.

[illegible]

000576

*2nd*

**Ivan – I didn't think I would ever have to do this in my life to stand face to face before someone who has taken away a love one's life.**

**You have truly hurt all of us when you took our baby WILLIAM<sup>1</sup> life away from us.**

**I was an Aunt to this young man. I was the fourth person to see him and hold him when he came into this world.**

**William took his first plane ride with me when he was 10 years old. I watched him grow from a baby into a young man; I took him to school; picked him up from school; bath him, held him; loved him; played with him and I took him to church. Can you see the picture I just presented to you? We were bonded; there was a love connection you took away. I loved William like a son, in fact he was the son I never had-Now he is GONE BECAUSE OF YOU!**

**I can't stop thinking about him. I miss seeing William. When he would see me it was always with a smile and kiss, saying "Hi Auntie", and introducing me to his friends. Now I will no longer hear his voice or see him, all of that is GONE because of you IVAN, because of your ANGER and MADNESS and wanting to get back at William over nothing. WHY IVAN? I'll tell you why, because you did not stop to think nor did you care to think about what you were getting ready to do.--Take a life. You took away a son, a brother, a grandson, a nephew and a friend. Now he's gone from this world because of you. Ivan you let your no caring feelings control you, and your cold madness made you take our boy's life because of your so call out of control anger thinking you were Mr. Big Stuff.**

**Ivan because of your ANGER you have brought much pain and hurt upon our family, we will never see William's smile again or hear his hellos' or hold the children he may have had.**

**I am truly hurt and heart broken because of you – yet I feel sorry for you-because I realize YOU did not have what WILLIAM had. William had a lot of love that surrounded him from his family and friends. IVAN may God Have mercy on your soul because he is the only one that can.**

*Janet Williams (Aunt)*





Alameda County  
District Attorney's Office  
Thomas J. O'Brien, District Attorney

000577

RE: KILGORE, RYAN D  
MICKLER, D. 141033  
RES: 06/13/2003

DEPT. BEV550  
DEPT. 6

**NOTICE OF VICTIM COMPENSATION CLAIMS**

**TO: DPO (ASSIGNED REPORT WRITER)**

BY: Heather Ravichand, Legal Asst.  
(510) 272-6183

DATE PREPARED: April 8, 2003  
E-MAIL US @ "Restitution, DA"

**CLAIMS AND PAYMENTS**

Claims for this case have been filed with (and payments made by) the State Victim Compensation Board. (VCP) as noted below:

Victim/Claimant	Claim #	Paid
1. Samuel Anderson	61643	\$5,000.00
2.		
3.		
4.		
5.		

**TOTAL PAID TO DATE: \$5,000.00**

Please recommend that the court make separate restitution order(s) payable to the Victim Compensation Board (VCB) for each individual claim number(s) in the amount(s) paid to date (P.C. 1202.4(f)(2)).

**JOINT AND SEVERAL ORDERS** should be issued in all cases where multiple defendants are responsible for the losses. *People v. Campbell* (1994) 21 Cal. App. 4th 825. Please recommend joint/several orders specifying the related defendants and do not state:

**THIS NOTICE MAY NOT REFLECT ALL LOSSES** for which a victim is entitled to restitution. It covers only VCB expenses. It does not include expenses for which the victim has otherwise reimbursed and property losses, etc. Please get this information from the victim. Have restitution ordered directly payable to the victim for these losses.

**RESTITUTION RESERVED:** In any case where restitution might be an issue the court should always reserve jurisdiction for future restitution orders even when a specific order is also made. (P.C. 1202.4(f); 1202.46)

Please contact me at anytime for further, up-to-the minute payment information to include in your sentencing report.



'Apr 08, 03

- CLAIM NUMBER BROWSE -

000578

03:11 PM

Claim Number	Claimant Name	Ver. Team	Total Awarded To Date	Claimant Lien Flag Number
508643	SAMUEL M ANDERSON	T001	5,000.00	N
***** End of Data *****				

Claim number: \_\_\_\_\_

Page Total: 5,000.00

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---  
help retrn quit bkwrđ frwrđ main

000579

04/09/03

10:51:09

CALIFORNIA STATE BOARD OF CONTROL

Revenue Management Screen

Financial Detail for Victims of Crime Program

Program: VCFINSP2

PAGE: 1

Claim Number 608643

Victim Name: WILLIAM B ANDERSON

Claimant Name: SAMUEL M ANDERSON

Provider: EMERGENCY FUND - FB

Amount Billed	Paid Provider	Paid Claimant	Amount Pending	Service Start	Service End	Hearing Date	Issued Date	Sta tus
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5492.38	2992.38	569.62	0.00	07-21-00		07-28-00	07-28-00	PRC
1438.00	1438.00	0.00	0.00	07-21-00		07-28-00	07-28-00	PRC



Alameda County  
District Attorney's Office  
Thomas J. Orloff, District Attorney

000580

RE: KILGORE, IVAN D.  
DOCKET #: 141033  
R&S: 6/13/2003

PFN: BBV550  
DEPT. 006

**NOTICE OF VICTIM COMPENSATION CLAIMS**

**TO: DPO JEFF WILSON**

**BY:** Jing Jing Shia, Legal Asst (ac)  
(510) 271-5188

**DATE PREPARED:** April 8, 2003  
**E-MAIL US @:** "Restitution, DA"

**CLAIMS AND PAYMENTS**

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1. Samuel Anderson	608643	\$5,000.00
2.		
3.		
4.		
5.		

**TOTAL PAID TO DATE:** \$5,000.00

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